

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 723

Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to revise its member business loans (MBL) rule to clarify the minimum capital requirements a federally insured corporate credit union (Corporate CU) must meet to make unsecured MBLs to its members other than member credit unions and corporate credit union service organizations (Corporate CUSOs). NCUA also proposes to revise the definition of “construction or development loan” to include loans for renovating or developing property owned by a borrower for income-producing purposes and the definition of “net worth” to be more consistent with how that phrase is defined in the Federal Credit Union Act (Act) and NCUA’s prompt corrective action regulation (PCA). Additionally, NCUA is soliciting comments on how best to amend the MBL rule to enable credit unions to participate more fully in government guaranteed loan programs.

DATES: Comments must be received on or before June 20, 2005.

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Part 723 Member Business Loans” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

Public inspection: All public comments are available on the agency’s website at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment

weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [OGC Mail @ncua.gov](mailto:OGC.Mail@ncua.gov).

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, at the above address, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

In addition to making regulatory changes as the need arises, NCUA also reviews all its existing regulations every three years. This review is conducted on a rolling basis so that a third of the regulations are reviewed each year. This helps NCUA update its regulations to address current regulatory concerns. NCUA provides notice to the public of those regulations under review so the public has an opportunity to comment. The following proposed revisions to the MBL rule are the result of this review and comments received on a previous MBL rulemaking.

B. Corporate Credit Union Capital Requirements

MBLs made by Corporate CUs to member credit unions and Corporate CUSOs are exempt from the MBL rule. 12 CFR 704.7(e)(1), (2); 12 CFR part 723. MBLs made by Corporate CUs to other members, however, are subject to the MBL rule. Accordingly, in those instances where the MBL rule applies, a Corporate CU must comply with the rule's collateral and security requirements. 12 CFR 723.7.

For example, one of the conditions a credit union must meet to make unsecured MBLs is to be “well capitalized as defined by §702.102(a)(1)” of the PCA rule. 12 CFR 723.7(c)(1); 12 CFR part 702. The PCA rule, however, does not apply to Corporate CUs. 12 U.S.C. 1790d(m); 12 CFR 702.1(c). Rather, Corporate CUs generally must maintain a minimum capital ratio of four percent or a different minimum capital ratio under special circumstances. 12 CFR 704.3(d), (e). Accordingly, NCUA proposes to amend the MBL rule’s capital requirements for unsecured MBLs to accommodate the differences between the more general capital requirements for natural person credit unions and those for Corporate CUs.

C. Definitions

The MBL rule defines the phrase “net worth” slightly differently than it is defined in the Act and PCA. 12 U.S.C. 1790d(o)(2); 12 CFR 702.2(f). To avoid confusion, NCUA proposes to revise the definition of “net worth” in the MBL rule to be the same as in PCA. The PCA rule’s definition of “net worth” is an expanded version of the Act’s. The PCA and Act definitions both state that secondary capital accounts are counted in the net worth of low income credit unions.

The MBL rule’s current definition of “construction or development loans” is limited to financing arrangements for acquiring property or rights to property to convert it to an income producing purpose. This definition excludes a loan to a borrower, who already owns or has rights to a property, to convert it to or improve it as income producing property. NCUA believes an appropriate test for determining if a loan is a construction

or development loan is whether the loan will be used to renovate or otherwise develop a property for an income producing purpose. NCUA does not believe loans for these purposes, the essential nature of which is related to construction or development, should be excluded from the definition of “construction or development loan” just because the borrower has already acquired the property or rights to it. Accordingly, NCUA proposes to revise the definition of “construction or development loans” as discussed.

D. Government Guaranteed Loan Programs

In October 2004, NCUA amended the MBL rule to permit credit unions to make SBA guaranteed loans under SBA’s less restrictive lending requirements instead of under the more restrictive MBL rule. 69 FR 62563 (October 27, 2004). Before issuing the amendment, NCUA reviewed the SBA’s loan programs in which credit unions can participate and determined they provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness. Additionally, NCUA has determined that these SBA programs are ideally suited to the mission of many credit unions to satisfy their members’ business loans needs.

NCUA solicited public comment on the amendment before issuing it. A number of commenters suggested NCUA expand the scope of the amendment to include other government guaranteed loan programs. Some commenters specifically named the Farm Service Agency and United States Department of Agriculture loan programs. Others suggested all government guaranteed loan programs be included.

NCUA has made clear it is willing to consider other government guaranteed loan programs as it becomes apparent there is demand for the program among credit unions. Since October 2004, NCUA has learned there may be such demand. Accordingly, NCUA is soliciting comment on how best to broaden the MBL rule to enable credit unions to participate more fully in other government guaranteed loan programs that the current MBL rule might otherwise restrict.

NCUA is interested in comments on whether to broaden the MBL rule in this regard, and, if so, if it is better to expand it to permit only specifically identified programs or to permit all such programs. NCUA is particularly interested in comments that address the benefits of specific programs and any safety and soundness or operational concerns associated with them.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This rule clarifies capital requirements for making unsecured MBLs, revises definitions for consistency and practical application and solicits comments on expanding the MBL rule regarding government guaranteed loan programs, without imposing any additional regulatory burden. This rule would not have a significant economic impact on a substantial

number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - - Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

AGENCY REGULATORY GOAL

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects

12 CFR part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on April 14, 2005.

Mary F. Rupp

Secretary of the Board

For the reasons stated above, NCUA proposes to amend 12 CFR part 723 as follows:

PART 723 — MEMBER BUSINESS LOANS

1. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

2. Revise §723.7(c)(1) to read as follows:

§ 723.7 What are the collateral and security requirements?

* * * * *

(c) * * *

(1) You are a natural person credit union that is well capitalized as defined by §702.102(a)(1) of this chapter or you are a corporate credit union that maintains a minimum capital ratio as required by §704.3(d) of this chapter or a different ratio as permitted under §704.3(e) of this chapter;

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3. Revise the definitions of “Construction or development loan” and “Net worth” in §723.21 to read as follows:

§ 723.21 Definitions.

* * * * *

Construction or development loan is a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to or improve it as income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses. Construction or development loan also is a financing arrangement for renovating or otherwise developing property, including land or structures, already owned by the borrower or that the borrower already has rights to, with the intent to convert it to or improve it as income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses.

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Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. For low income-designated credit unions, net worth also includes secondary capital accounts

that are uninsured and subordinate to all other claims, including claims of creditors, shareholders and the NCUSIF. For any credit union, net worth does not include the allowance for loan and lease losses account.